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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 11–25) is reported at 69 F. Supp. 197.

JURISDICTION

The judgment of the Court of Claims was entered on January 6, 1947 (R. 25). The petition for a writ of certiorari was filed on March 25, 1947. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether bonds issued by a joint stock land bank pursuant to the Federal Farm Loan Act

(Act of July 17, 1916, c. 245, 39 Stat. 360, 12 U. S. C. 641 *et seq.*) are obligations of the United States.

STATUTE INVOLVED

Section 26 of the Federal Farm Loan Act (Act of July 17, 1916, c. 245, 39 Stat. 360, 380, 12 U. S. C. 931) provides as follows:

> SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.
>
> Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and

taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

STATEMENT

The following facts were alleged by the petitioner in the court below (R. 1–10):

The Bankers Joint Stock Land Bank of Milwaukee was a joint stock land bank organized under the Federal Farm Loan Act (R. 1, 2).[1] In or about 1919 this bank issued bearer bonds maturing on various dates between 1938 and 1955 (R. 2–4, 9). These bonds bore interest at rates from 4½ percent to 5½ percent payable semi-annually and evidenced by coupons attached to the bonds (R. 9). They were sold to the public by private underwriters (R. 9).

[1] As the court below pointed out (R. 14), "The Joint Land Bank was organized by citizens of the United States for the purpose of private gain and all of the capital of this corporation was furnished by private investors and the corporation engaged in the loaning of money to farmers for a profit, subject only to the restrictions imposed by the Act of Congress referred to above [Federal Farm Loan Act]."

The face of a typical bond read (R. 3–4):

JOINT STOCK FARM LOAN BOND

Act of Congress, Approved July 17, 1916

M. 1480

THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN

Is indebted to the Bearer in the sum of

1000 one thousand dollars 1000

This bond is payable twenty years from date of issue with interest at the rate of 5 per centum per annum, payable semi-annually following date of issue. Both principal and interest are payable in gold or lawful money of the United States at the office of the issuing Joint Stock Land Bank, or at the office of such fiscal agent or agents as such Bank may hereafter designate. This bond is subject to redemption on any interest date after five years from the date hereof by the payment of the principal of the bond and the unpaid accrued interest.

This bond is issued under authority of the Act of Congress approved July 17, 1916, which provides that "farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

This Bank is organized under Section sixteen of the Federal Farm Loan Act,

operates under the provisions thereof, and is under Federal supervision.

In Witness Whereof The Bankers Joint Stock Land Bank of Milwaukee has caused this obligation to be signed by its President and attested by its Secretary under its corporate seal, and two interest coupon sheets of twenty coupons each to be attached hereto.

Milwaukee, Wisconsin, May 1, 1919.

(ILLEGIBLE),
President.

Attest:
GEO. L. BARTLETT,
Secretary.

The back of each bond contained the following statement (R. 4–5):

This bond is issued under authorization from the Federal Farm Loan Board and is secured by United States Government bonds or approved first mortgages on farm lands at least equal to the amount of the bonds issued.

F. W. MCLEAN,
Registrar.
17th Federal Land Bank District.

A typical interest coupon attached to the bonds read (R. 5):

17 $25

THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WIS.

Will Pay to Bearer Twenty-Five Dollars For Six Months' Interest On The First

Day of Nov., 1927 On $1,000 Joint Stock Farm Loan Bond.
M. 1480 1924–39

In 1927 the bank defaulted in the payment of interest on its bonds and it was declared insolvent and placed in receivership by the Federal Farm Loan Board (R. 2). A Bondholders Protective Committee was organized with which were deposited receiver's certificates representing approximately 95 percent in value of the bonds (R. 7).

In 1931 petitioner, the Bankers Farm Mortgage Company, was organized as a Wisconsin corporation by a group of business men who held substantial amounts of the bonds of the bank (R. 7). Petitioner's sole business has been the acquisition of bonds of the bank and the acquisition and liquidation of its assets (R. 7). In 1931 petitioner circularized all known bondholders of the bank and offered to exchange one share of its own non-par common stock (declared value $40 per share) for each $100 par value of bonds of the bank or, in the alternative, to purchase such bonds for cash equal to 40 percent of their par value (R. 7–8). By this method petitioner acquired more than 95 percent in principal amount of the outstanding bonds of the bank (R. 8). It acquired bonds of the par value of $4,533,100 in exchange for 45,262 shares of its own stock and bonds of the par value of $11,021,000 for $4,323,-350.16 in cash, paid in installments (R. 8).

The receiver completed the liquidation by 1933 and bondholders received 55.27 percent of the par value of their bonds (R. 2).[2]

Petitioner brought suit in the Court of Claims and in its amended petition, filed July 17, 1946, alleged that the United States was indebted to it in respect of the unpaid balance of the Bankers Joint Stock Land Bank bonds "in the sum of $7,886,047.04, after allowing all just credits and offsets," and prayed for a judgment in that amount, with interest (R. 10). The court below sustained defendant's demurrer to the petition holding that "the language and history of the Farm Loan Act and the language and promises appearing on the bonds negative any implication of a promise to pay by the Government or the right of the purchasers and holders of the bonds to look to the United States as maker, surety or guarantor" (R. 18).

ARGUMENT

The only question presented by the petition is whether the bonds issued by the Bankers Joint Stock Land Bank are obligations of the United States. Neither the bonds themselves nor the Federal Farm Loan Act purport to make the bonds obligations of the United States. Peti-

[2] A more detailed statement of the facts as to all these transactions is contained in *Bankers Farm Mortgage Company* v. *United States*, 94 C. Cls. 44, which involved questions concerning the payment of certain expenses incident to the receivership of this same joint stock land bank.

tioner contends that the bonds became obligations of the United States because they were designated "instrumentalities" of the United States for tax exemption purposes, and because the Government's interest in the success of the Land Bank programs led the public to believe that it was guaranteeing the payment of the bonds. It is submitted that petitioner's contention that the United States is obligated to pay such bonds has only the merit of novelty.

1. It is clear that the language of the bonds does not contain any promise by the United States to pay them, either originally or upon default by the bank. The bonds recite that "The Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, Is indebted to the bearer in the sum of One Thousand Dollars," and the bank is the only party which signed the bonds (R. 3–4). The interest coupons attached to the bonds recite that "The Bankers Joint Stock Land Bank of Milwaukee, Wis., Will Pay to Bearer * * *" (R. 5).

It is apparent from the face of the bonds, therefore, that the United States did not assume any obligation with respect to their payment, whether as maker, endorser, guarantor, or in any other capacity. Furthermore, the statement on the back of each bond that it "is secured by United States Government bonds or approved first mortgages on farm lands at least equal to the amount of the bonds issued" (R. 4–5)

plainly negatives any implication that holders of the bonds may look to the United States as security for their payment. It would seem obvious that, if those issuing the bonds had considered that the United States guaranteed their payment, a statement of such importance would have been stated in the bonds in the boldest type.

2. The Federal Farm Loan Act "was adopted in response to a national demand that the federal government should set up a rural credit system by which credit, not adequately provided by commercial banks, should be extended to those engaged in agriculture, upon the security of farm mortgages." *Federal Land Bank* v. *Gaines,* 290 U. S. 247, 250.

Nowhere in the Act is there any statement that the United States shall be liable for payment of bonds issued by joint stock land banks or that such bonds shall be obligations of the United States. It is inconceivable that Congress, although specifying in meticulous detail in the Act the conditions under which joint stock land banks could issue bonds, the nature of the required collateral security for them, and certain provisions to be contained in such bonds,[3] would have left solely to implication what would have

[3] Each joint stock land bank was authorized "to issue bonds based upon mortgages taken by it in accordance with the terms of this Act" (Act, § 16; 12 U. S. C. 821). A joint stock land bank desiring to issue bonds was required to make appli-

been their most important feature—a promise by the United States to pay them. If Congress had intended to make these bonds obligations of the United States, it would have said so in the Act.[4]

3. The legislative history of the Federal Farm Loan Act clearly shows that bonds issued by joint

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cation to the Federal Farm Loan Board for approval of the issue and to tender to the local registrar of the Board first mortgages on farm lands or United States Government bonds equal in amount to the sum of the bonds proposed to be issued (Act, § 18; 12 U. S. C. 841). The Federal Farm Loan Board would then investigate and appraise the tendered securities, and no bonds could be issued without the Board's approval (Act, § 18; 12 U. S. C. 842–844). Upon approval of a bond issue, the registrar of the Federal Farm Loan Board retained in his possession the mortgages or Government bonds securing the bond issue (Act, § 19; 12 U. S. C. 853). Bonds issued by joint stock land banks were engraved and printed by the Treasury, which was to be reimbursed its expenses therefor through assessments made by the Federal Farm Loan Board against the banks (Act, § 20; 12 U. S. C. 864). Bonds were to be in the form prescribed by the Board and were to state that the bank was organized under the Federal Farm Loan Act and was "under Federal supervision" (Act, § 16; 12 U. S. C. 821). Bonds issued by joint stock land banks were made "a lawful investment for all fiduciary and trust funds" and might "be accepted as security for all public deposits" (Act, § 27; 12 U. S. C. 941).

[4] That Congress left no room for doubt when it intended that the United States should be obligated to pay as guarantor of bonds or in any other capacity is clearly shown by the Federal Farm Mortgage Corporation Act, approved January 31, 1934, c. 7, 48 Stat. 344, 12 U. S. C. 1020 *et seq.*, and the Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, as amended, c. 168, 48 Stat. 643, 12 U. S. C. 1461 *et seq.* Section 4 (a) (12 U. S. C. 1020c) of the former Act and Section 4 (c) (12 U. S. C. 1463) of the latter Act, as amended, each pro-

stock land banks are not and were not intended to be obligations of the United States. In the debates in the Senate, Senator Hollis, the member of the Committee on Banking and Currency who was in charge of the bill, expressly pointed out that land bank bonds would not be Government obligations.[5]

In the debates in the House, Representative Moss, a member of the Committee on Banking and Currency in charge of the bill in the House, brought out clearly that land bank bonds would not be obligations of the United States.[6]

Furthermore, as the court below pointed out (R. 19), certain proposed amendments under

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vided with reference to the bonds issued by the corporations that "Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guarantee shall be expressed on the face thereof * * *." Cf. 38 Op. Atty. Gen. 75.

[5] He stated (53 Cong. Rec. 6856).

"Gov. Herrick says the Government guarantees these bonds. It does nothing of the kind. There is no Government guaranty anywhere in the bill, and that is one of the things farmers complain of. They say the Government should get behind this business and it ought to guarantee the bonds. If I had my way it would do it, because I believe personally that it is a proper Government function. I think the majority of the Members of this body are against that. Therefore, this is what is provided."

[6] He stated (53 Cong. Rec. 7536):

"It is possible under the terms of this bill that the United States Treasury may purchase $9,000,000 stock. This is the full amount of Government funds which may be invested in the system. No guaranty is given by the Government to any bonds issued by the bank."

which the Government would have guaranteed payment of the bonds and interest were rejected (53 Cong. Rec. 7746–7747, 7870–7875, 7972, 7999–8002, cf. 53 Cong. Rec. 7724).

Subsequent legislation enacted to meet the agricultural crisis in 1933 further demonstrates that petitioner's bonds issued under the Federal Farm Loan Act are not obligations of the United States by way of guarantee or otherwise. The Emergency Farm Mortgage Act of 1933 (Act of May 12, 1933, c. 25, 48 Stat. 41) was enacted as Title II of the Agricultural Adjustment Act (Act of May 12, 1933, c. 25, 48 Stat. 31). Section 21 of the Mortgage Act authorized federal land banks to issue, until May 12, 1935, or such earlier time as the Farm Loan Commissioner might determine that farm loan bonds were readily salable in the open market at a yield not in excess of 4 percent, bonds in an aggregate amount not to exceed $2,000,000,000 which "shall bear interest at a rate not in excess of 4 per centum per annum, and shall be fully and unconditionally guaranteed as to interest by the United States, and such guaranty shall be expressed on the face thereof" (48 Stat. 41, 42; 12 U. S. C. 992). The section further provided that in the event the Secretary of the Treasury should pay any interest on such bonds, the amount so paid should become an obligation of the issuing bank to the United States. These provisions of the 1933 Act would have been entirely unnecessary if petitioner were correct in its con-

tention that bonds issued by the joint stock land banks under the original Federal Farm Loan Act were already obligations of the United States.

4. Petitioner relies principally upon that sentence of Section 26 of the Act which provides that "First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation," and contends that "This section making the bonds in question tax exempt instrumentalities of the Government of the United States to be operative at all must be construed to create the governmental obligation contended by the petitioner" (Pet. 5–6).

Petitioner's contention, it is submitted, is clearly without merit for it is well established by the decisions of this Court that "Congress may establish banks for national purposes", that it may, "if it sees fit to do so," exempt securities of such banks from taxation even though the principal business of such banks is "private banking conducted with the usual methods of business."[7]

[7] Joint stock land banks may be described, as Mr. Justice Brandeis stated with reference to national banks and federal reserve banks, as "private corporations in which the Government has an interest." *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 426.

Smith v. *Kansas City Title Co.*, 255 U. S. 180, 208, 212; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *Bank of the United States*, 9 Wheat. 738; *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664; *Farmers Bank* v. *Minnesota*, 232 U. S. 516; *Federal Land Bank* v. *Crosland*, 261 U. S. 374; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95.

CONCLUSION

The decision below is plainly correct, and there is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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